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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/609,931	06/30/2000	Jay S. Walker	99-099	2766

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STAMFORD, CT 06905

EXAMINER

BUCHANAN, CHRISTOPHER R

ART UNIT	PAPER NUMBER
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3627

SHORTENED STATUTORY PERIOD OF RESPONSE	MAIL DATE	DELIVERY MODE
3 MONTHS	02/20/2007	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

Office Action Summary

Application No.

09/609,931

Applicant(s)

WALKER ET AL.

Examiner

Christopher R. Buchanan

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 06 October 2006.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1,3-24,27-30,33 and 35-49 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1,3-24,27-30,33 and 35-49 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date 10/11/06

- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

Claim Rejections - 35 USC § 103

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 1, 3-24, 27-30, 33, and 35-49 are rejected under 35 U.S.C. 103(a) as being unpatentable over Brockman et al. (US 5,826,240) alone.

Regarding claim 1, Brockman discloses a method that includes receiving customer information at a processing device (col. 5 line 47+), identifying a query based at least in part on the customer information (col. 3 line 25+, col. 6 line 35+), prompting an attendant to present the query if a timing condition (e.g., inventory being available, col. 5 line 65) associated with a merchant is satisfied (col. 3 line 25+), receiving a verbal response to the query (col. 5 line 53, col. 6 line 39+), and analyzing the gathered customer information by the processing device (col. 3 line 31-33).

The method of Brockman differs from the claimed invention in that it is not explicitly shown to analyze the verbal response by the processing device. However, it is stated (col. 3 line 31+) that the processing device analyzes recorded data, which is, at least partly, gathered from verbal responses and the device includes voice recognition capabilities. This would enable (and effectively constitute) analyzing the verbal response, and given the capabilities of the device it would be a matter of design choice

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to have the device analyze verbal responses. Furthermore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the method of Brockman to include analyzing the verbal response by the processing device to assist the seller in correctly recording sales data during the sales process.

Regarding claims 3 and 4, the method includes a sequence of steps, which could include several queries and responses since this is merely repetition (col. 3 line 18+). Regarding claims 5-8, gathered information could include a host of information, such as transaction data from previous and current transactions (col. 4 line 44+) and initiation and completion of transactions. The characteristics of the gathered information would be a matter of design choice. Regarding claims 9-13, the query could be based on a variety factors, such as customer identity, previous transactions, personal customer information (age, credit status), or authority of the attendant (col. 4 line 37+, col. 8 line 60+). It is common practice for attendants to retrieve customer information. Regarding claim 14, transaction information could include a variety of data, including times, dates, customer and attendant identification, prices, etc. (col. 4 line 25+, col. 5 line 1+, col. 7 line 33). Regarding claims 15-18, output data is generated and categorized based on the verbal response and further queries could be submitted based on the output data, which could generate further data (col. 3 line 22+, col. 6 line 25+). Regarding claim 19, the attendant is identified. Regarding claim 20, the processing device analyzes if the attendant properly presents the query (col. 7 line 8+). Regarding claims 21 and 22, information could be gathered using a variety of devices, such as portable or point of sale devices (col. 4 line 10+). Regarding claim 23, responses can be recorded (col. 8

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line 8). Regarding claim 24, an offer is determined from gathered data and presented (col. 8 line 50+). Regarding claim 27, remediation responses are determined and given to the attendant to present (col. 8 line 60+). Regarding claims 28 and 29, the device determines if the attendant has properly performed the sales practices and, if so, the attendant can be compensated, wherein the compensation is different from the standard compensation (col. 9 line 32+).

Regarding claim 30, the features of the claimed invention have been discussed in the rejection of claims 1, 3-24, and 27-29 above, except for receiving first information at the processing device associated with a merchant.

Brockman does not show receiving first information at the processing associated with a merchant. However, the device receives a variety of information regarding the merchant (col. 4 line 16+), and it would be a matter of design choice as to the order in which that information is received.

Regarding claim 33, the features of the claimed invention have been discussed in the rejection of claims 1, 3-24, and 27-29 above.

Regarding claim 35, the features of the claimed invention have been discussed in the rejection of claims 1, 3-24, and 27-29 above, except for receiving by the processing device an indication of a universal product code identifying a product.

Brockman does not show receiving an indication of a universal product code identifying a product. However, it is well-known to identify inventory and sales items with various types of ID markers, such as a bar code, UPC, RFID tag, etc. (see US

5,926,796, Fig. 10) and to scan the marker with a processing device. It would be a matter of design choice to identify products with such an ID marker.

Regarding claims 36-38, Brockman shows a timing condition based on the availability of inventory items (col. 5 line 65), however, the timing condition could be based on a variety of different factors, such as the time of year (e.g., Christmas, summer travel season), the weather, service availability, and so on. It would be a matter of design choice as to what the timing condition is based upon. Regarding claim 39, the query is based in part on the timing condition. Regarding claim 40, the reward is credited to an employee account (col. 5 line 6+). Regarding claim 41, attendant conversation is recorded and analyzed to determine correct presentation (col. 8 line 8+). Regarding claims 42-44, the remediation response is determined in part on the customer response (col. 8 line 60+) and could include various benefits and incentives, such as rebates, assistance, etc., which are well-known.

Regarding claims 45-49, the features of the claimed invention have been discussed in the rejection of claims 1, 3-24, and 27-29 above. Furthermore, it is well-known to provide customers with surveys regarding such things as service, store condition, quality of products, etc. The details of the survey would be a matter of design choice.

Response to Arguments

3. Applicant's arguments with respect to claims 1, 3-24, 27-30, 33, and 35-36 have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

4. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

5. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Christopher R. Buchanan whose telephone number is 571-272-8134. The examiner can normally be reached on Mon.-Fri. 9:00am - 5:30pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Ryan Zeender can be reached on 571-272-6790. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

CB

 2/15/07
F. RYAN ZEENDER
PRIMARY EXAMINER